

**State of California
California Regional Water Quality Control Board
Santa Ana Region**

April 18, 2008

ITEM: *9

SUBJECT: Order No. R8-2008-0053, Inland Empire Utilities Agency, Magnolia Channel Improvements, City of Chino

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2008-0053, which authorizes the discharge of fill to waters of the State that have been determined to be outside of the U.S. Army Corps of Engineers' jurisdiction and are not subject to regulation under Clean Water Act Section 404 (non-federal waters).

BACKGROUND

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with Section 13260." Section 13260(a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States must obtain State Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (Corps) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (State Board) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations Title 23, Section 3830 *et seq.* Since November 2003, all Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification."

Due to recent decisions by the Supreme Court that increasingly have limited the authority of the Corps to regulate discharges of dredge and fill to waters of the U.S., some projects discharge dredge or fill to waters of the State that are 'non-federal' waters. As a result, these projects are not subject to a CWA Section 404 permit from the Corps and do not require a Certification. In the absence of the need to obtain a Certification, the State Board has asserted the State's authority to regulate

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discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act, codified as California Water Code Division 7.

On May 4, 2004, the State Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-0004-DWQ)." However, numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On December 3, 2007, Regional Board staff received an application for Certification from Inland Empire Utilities Agency (IEUA). In the application, IEUA proposes modifications to Magnolia Channel that will result in the discharge of fill to 0.56 acre of waters of the State. A total of 2,890 linear feet of waters of the State will be affected by the modifications.

During a meeting with IEUA staff on March 17, 2008, Regional Board staff learned that IEUA has determined that the Magnolia Channel is not subject to the jurisdiction of the Corps under CWA Section 404. Regional Board staff informed IEUA that the proposed discharges of fill would need to be authorized under individual waste discharge requirements. Regional Board staff amended the public notice for the project to reflect the proposed action and the notice was posted on March 27, 2008. In order to allow for the requisite 30-day public review, Order No. R8-2008-0053, if approved, will not become effective until April 26, 2008. If significant public comment objecting to the Order is received after Regional Board consideration on April 18, 2008, the Order will be brought back to the Regional Board for further consideration at a subsequent public hearing.

The project consists of discontinuous improvements that affect Magnolia Channel in a project area beginning at Kimball Avenue, where Magnolia Channel enters onto the IEUA facility at 6075 Kimball Avenue, and ends just south of El Prado Road. The channel modifications begin with the construction of an in-stream concrete-lined sedimentation basin from Kimball Avenue to approximately 180-feet downstream. The basin will consist of an in-line spillway with a low-flow outlet and an access ramp. From the spillway toe to approximately 1,100 feet downstream, Magnolia Channel will be re-contoured into a trapezoidal channel with a 10-foot wide bottom width and 1.5:1 sloped banks (total bank-to-bank width will be 34-feet). Magnolia Channel will be armored with a turf-reinforced geo-textile. The turf-reinforced, geo-textile-armored reaches of the Magnolia Channel will be subject to mowing in order to maintain hydraulic capacity.

The next southerly reach of Magnolia Channel has recently been improved in a similar manner by Majestic Realty Company along Building 2 of the Majestic Chino South Business Park and on IEUA property. The work was completed consistent with IEUA channel improvement plans and IEUA granted construction access to Majestic Realty Company to construct improvements on IEUA property. The related discharges of fill were not authorized by the Regional Board and a Staff Enforcement Letter was issued to Majestic Realty Company on March 25, 2008 for violations of

CWC Section 13260. Regional Board staff is continuing to investigate the violations in order to determine if additional action is warranted.

A rip-rap structure constructed by Majestic Realty Company at the terminus of their improvements will be removed by IEUA and replaced with another concrete-lined sedimentation basin. The sedimentation basin will also divert low-flow discharges into a proposed adjacent flow-by extended detention basin¹. The extended detention basin is currently proposed as a dry basin but may be later supplied with recycled wastewater in order to function as a riparian wetland.

A portion of the funding for the Magnolia Channel modifications comes from State Proposition 40 under State Water Resources Control Board Grant Agreement No. 06-217-558-0. New development in the tributary area of the extended detention basin will not be allowed to claim the use of the basin to treat their storm water runoff. Regional Board staff has agreed that the basin capacity may be used to address increases in the flow rate, volume, or duration from new development pursuant to the requirements of the San Bernardino County Water Quality Management Plan (WQMP) only if the new development pays a fair share amount for the basin's construction, that amount is not reduced by consideration of State funds in its calculation, and the treatment capacity volume of the basin is not diminished by flows from new development.

Downstream from the second sedimentation basin, Magnolia Channel will be confined by the adjacent extended detention basin within an earthen channel with a bottom width of 50 feet. The Channel reach will be vegetated with native trees and plants that are artificially irrigated with recycled wastewater. The trees and plants are expected to require routine irrigation until their roots mature and access the relatively shallow groundwater beneath. The Channel reach design utilizes a roughness coefficient of 0.08, which will require minimal maintenance for hydraulic efficiency.

The project also includes improvements to the Flowers Street and El Prado Road crossings. Flowers Street will be raised approximately 4 feet², re-surfaced, an 18-inch culvert added, and the downstream road embankment armored with rip-rap. El Prado Road will be widened, a triple box culvert added, and the road embankments armored with rip-rap. The road improvements will result in permanent and temporary loss of woody riparian vegetation. Except for these areas, the Channel modifications will affect predominantly non-native grasses. The project is located in Section 26 of Township 2 South, Range 8 West, of the U.S. Geological Survey *El Prado, California*, 7.5-minute topographic quadrangle map (33.96068 degrees N/-117.67213 degrees W).

The Magnolia Channel Improvement project is among those projects that are a part of the Chino Creek Master Plan (Plan) prepared by IEUA. The Plan is a watershed-scale approach to addressing water quality, flood control, wildlife habitat

¹ The extended detention basin will have a treatment volume of approximately 13.31 acre-feet. The single basin may also be substituted with two basins totaling 13.31 acre-feet.

² The new elevation will provide an additional detention volume of 3.50 acre-feet.

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preservation, and recreation issues. Generally, these issues have traditionally been addressed in isolation and on a project-by-project basis, thereby making them competing issues. By addressing them together, their underlying goals can be achieved more efficiently and in a more balanced manner. Several other projects within the Plan have also received State grant funding.

Magnolia Channel is a tributary to Chino Creek Reach 1 (Chino Creek), which flows into the Prado Basin. The Prado Dam, operated by the U.S. Army Corps of Engineers, controls water levels within the Basin. The lower portion of the Magnolia Channel Improvement project area lies below the anticipated 566-foot flood elevation of the Basin. Consequently, fill placed below the flood elevation will need to be offset with excavations elsewhere in the Basin, subject to Corps' approval, in order to maintain its flood volume.

Pursuant to an agreement with the Orange County Water District (OCWD), the Corps maintains a "water conservation pool" at a specified elevation within the Basin and controls releases of collected storm water runoff from this pool to more closely match the infiltration capacity of OCWD recharge facilities downstream³. The effect is that groundwater recharge of storm water runoff is maximized.

Chino Creek is an engineered earthen channel that contains riparian habitat for the Least Bell's vireo, a species listed as endangered under both federal and state law. Consequently, the Corps has designated portions of Chino Creek Reach 1 as an "extreme resource area"⁴. The Wildlife Habitat (WILD) and the Rare, Threatened, or Endangered Species (RARE) beneficial uses have also been assigned in the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan). Although engineered, portions of Chino Creek are unstable and experiencing erosion⁵. This erosion has the potential to impact the physical and biological integrity of Chino Creek and adversely affect beneficial uses.

IEUA's Chino Creek Master Plan envisions stabilizing Chino Creek using bio-engineering methods. These methods include modifying the banks of the Creek to create engineered floodplains, bank stabilization with vegetation and/or bank modifications as opposed to traditional hard-armoring techniques such as plate concrete or rock slope protection.

Regional Board staff has determined that, in the interim, in order to prevent further erosion of Chino Creek, adverse impacts to the storage volume of OCWD's water conservation pool, and degradation of riparian habitat for endangered species and other wildlife, projects in the Chino Creek watershed should be subject to limits on increases in flow rate, volume, and duration. Flow limits are currently imposed on certain projects as part of the implementation of the San Bernardino County WQMP.

³ See OCWD "Groundwater Management Plan", 2004

⁴ See City of Chino, "The Preserve Master Plan Environmental Impact Report", prepared by Michael Brandman Associates, March 2003

⁵ See IEUA, "Technical Memorandum No. 1, Chino Creek Master Plan, Characterization of Historical and Existing Conditions", prepared by CH2MHILL, April 2005

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IEUA has prepared an hydrology analysis that indicates that the Magnolia Channel improvements will result in beneficial reductions in flow rates and volumes.

The Basin Plan does not designate beneficial uses for the Magnolia Channel. However, based upon review of the project submittals, Regional Board staff has determined that the project has the potential to impact existing or potential WILD, RARE, Non-contact Water Recreation (REC-2), and Groundwater Recharge (GWR) beneficial uses. IEUA proposes to mitigate impacts to beneficial uses through the planting of woody riparian vegetation in the reach of Magnolia Channel downstream from the extended detention basin as described above. The mitigation effort is expected to create 1 acre of woody riparian vegetation within the reconfigured Channel.

Pursuant to CEQA, IEUA adopted a Mitigated Negative Declaration (State Clearinghouse No. 2006111076) on February 27, 2007. A Notice of Determination was filed with the San Bernardino County Clerk on February 23, 2007. IEUA's MND has been considered in the preparation of Order No. R8-2008-0053. The Magnolia Avenue modifications, as described in this Staff Report, are reduced in scope from that described in the MND. However, the reduced scope of the project does not result in any new, undisclosed, or un-mitigated impacts that are not analyzed in the MND.

RECOMMENDATION

Board staff recommends that the Board adopt Order No. R8-2008-0053.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District

California Department of Fish and Game

U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office

State Water Resources Control Board, Department of Water Quality, Water Quality Certification Unit

State of California
California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2008-0053

Waste Discharge Requirements

for

Inland Empire Utilities Agency
Magnolia Channel Improvements
City of Chino

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. Inland Empire Utilities Agency (hereinafter, discharger) proposes to discharge fill to 0.56 acres of Magnolia Channel, including 0.15 acres of riparian areas, as part of discontinuous flood control and roadway improvements between Kimball Avenue and an area just downstream of El Prado Road in the City of Chino.
2. The proposed discharge of fill is the result of the following improvements:
 - a. Construction of an in-stream concrete-lined sedimentation basin from Kimball Avenue to approximately 180-feet downstream.
 - b. Re-contouring and armoring approximately 1,100 feet of Magnolia Channel, between the sedimentation basin to a previously-improved reach along the Majestic Chino South Business Park. Magnolia Channel will be re-contoured into a trapezoidal channel with a 10-foot wide bottom width and 1.5:1 sloped banks (total bank-to-bank width will be 34-feet). The Channel will be armored with a turf-reinforced geo-textile.
 - c. Replacement of a rip-rap structure constructed at the terminus of the previous improvements with another in-stream concrete-lined sedimentation basin. The sedimentation basin will also divert low-flow discharges into a proposed adjacent flow-by extended detention basin.
 - d. Constructing a trapezoidal earthen channel along the extended detention basin, with a 50-foot channel bottom width. The channel reach will be vegetated with woody riparian vegetation and artificially irrigated until the plants mature and their roots access shallow groundwater.

- e. Constructing an 18-inch culvert beneath Flowers Street, resurfacing the roadway, and armoring the downstream embankment with rock slope protection.
 - f. Constructing a triple-box culvert beneath El Prado Road, widening the roadway, and armoring both upstream and downstream embankments with rock slope protection.
- 3. The Board commonly regulates discharges of dredge or fill to waters of the State through the issuance of Clean Water Act (CWA) Section 401 Water Quality Standards Certifications (Certifications) where the discharge is also subject to regulation by the Corps. This occurs when the receiving water is both a water of the State as defined by the California Water Code and a water of the U.S. under CWA Section 404. In the absence of an applicable federal permit or license, the Board may regulate the proposed discharge through the issuance of Waste Discharge Requirements or a waiver thereof.
- 4. The discharger has determined that the proposed discharge of fill is not subject to the Corps' jurisdiction under CWA Section 404.
- 5. Magnolia Channel is largely a wash vegetated with non-native grasses. Its lower reaches include dense, woody, riparian vegetation. The Water Quality Control Plan for the Santa Ana Region (1995) does not designate beneficial uses for the affected reach of Magnolia Channel. Based on the applicant's biological assessment, beneficial uses of the drainage that may be impacted by the proposed discharge of fill are:
 - a. Groundwater Recharge (GWR);
 - b. Non-contact Water Recreation (REC-2);
 - c. Wildlife Habitat (WILD); and
 - d. Rare, Threatened, or Endangered Species (RARE).
- 6. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill on the beneficial uses of waters of the State.
- 7. This Order regulates the discharge of fill material to waters of the State that are not considered under Corps CWA Section 404 jurisdiction (non-federal). The discharger submitted a Report of Waste Discharge on December 3, 2007.
- 8. In order to provide for requisite 30-day public review and comment on the adoption of WDRs, this Order will not go into effect until April 26, 2008. If significant public comment is received, this Order will be reconsidered by at a subsequent public hearing.

9. The discharger has committed to mitigate direct impacts to waters of the State by enhancing the on-site waters by planting 1 acre of woody riparian plants in the modified reach of Magnolia Channel along the proposed extended detention basin.
10. Pursuant to CEQA, the Inland Empire Utilities Agency (IEUA) adopted a Mitigated Negative Declaration (MND) on February 27, 2007. The MND has been considered in the adoption of this Order.
11. The Board has considered antidegradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.
12. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.
13. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that the discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

A. DISCHARGE SPECIFICATIONS:

1. No activities associated with the project shall cause or threaten to cause a nuisance or pollution as defined in Section 13050 of the California Water Code.
2. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.
3. The groundwater in the vicinity of the project shall not be degraded as a result of the project activities or placement of fill for the project.
4. The discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.

B. DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. Except as authorized by this Order, the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by a separate National Pollutant Elimination System (NPDES) permit, are prohibited.

C. PROVISIONS:

1. The discharger shall create a minimum of 1.0 acre of self-sustaining, woody riparian vegetation in Magnolia Channel as proposed.
 - a. A functional irrigation system shall be in place and initial planting shall occur not later than October 15th, following the conclusion of discharges of fill at the Flowers Street and El Prado Road work sites.
 - b. Following initial planting, the discharger shall submit an annual report by November 15th of each year, for a period of five years, documenting the progress of the mitigation effort. The report shall include site photos taken from fixed locations; describe any circumstances encountered that adversely affect the effort and the corrective measures taken; and generally describe the routine maintenance that occurred during the reporting period. The Executive Officer may waive this provision if he determines that the mitigation effort is successful or that the effort will be successful without the need for further interventions to establish the riparian area.
 - c. In the event that the mitigation effort fails after the five year reporting period, the discharger shall propose and implement alternative mitigation acceptable to the Executive Officer.

2. The discharger shall maintain a copy of this Order at the site so that it is available to site operating personnel at all times. Key operating personnel shall be familiar with its content.
3. The discharger shall remove from the site any waste or fill material found to contain substances that may have a deleterious effect on water quality, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.
4. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code and may constitute a violation of the CWA and its regulations, and is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order; or a combination thereof.
5. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.
6. The provisions of this Order are severable, and if any provision of this Order, or the application of any provisions of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order shall not be affected thereby.
7. The filing of a request by the discharger for modification, revocation and re-issuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.
8. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from liabilities under federal, state, or local laws, nor guarantee the discharger a capacity right in the receiving waters.
9. This Order does not convey any property rights of any sort, or any exclusive privilege.
10. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.
11. In the event of any change in control or ownership of land or waste discharge facility presently owned or controlled by the discharger, the

discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Board.

12. This Order will serve as a Clean Water Act Section 401 Water Quality Standards Certification in the event that one is required by any federal agency, except as noted below. Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:
 - a. Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
 - b. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
 - c. Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.
13. The Board and other authorized representatives shall be allowed:
 - a. Entry upon premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;
 - b. Access to copy any records that are kept under the requirements of this Order;
 - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Order.
14. This Order shall be effective on April 26, 2008, barring public comment received after April 18, 2008 that necessitates reconsideration of the Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 18, 2008.

Gerard J. Thibeault
Executive Officer